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CITY OF SAN JOSE, OFFICER DANIEL PFEIFER, OFFICER MARK NATIVIDAD,
OFFICER ANTHONY WEIR, and OFFICER HIGGINS

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS VAN ZANDT,

Plaintiff,

vs.

CITY OF SAN JOSE, OFFICERS
DANIEL PFEIFER, MARK NATIVIDAD,
ANTHONY WEIR, and HIGGINS,
individually and as employees of the
CITY OF SAN JOSE, TARGET
STORES, INC., THE WESTFIELD
GROUP, PROFESSIONAL SECURITY
CONSULTANTS, and DOES 1-10,
Inclusive,

Defendants.

CASE NO.: C07-04987 JF

**DEFENDANTS' ANSWER TO FIRST
AMENDED COMPLAINT FOR
VIOLATION OF CIVIL RIGHTS,
FALSE ARREST, BATTERY,
INTENTIONAL INFLICTION OF
EMOTIONAL DISTRESS, AND
NEGLIGENT INFLICTION OF
EMOTIONAL DISTRESS**

JURY TRIAL DEMANDED

In answer to the First Amended Complaint on file herein, Defendants, CITY OF SAN JOSE, OFFICER DANIEL PFEIFER, OFFICER MARK NATIVIDAD, OFFICER ANTHONY WEIR and OFFICER HIGGINS, respond as follows:

1. In answer to Paragraph 1 of the First Amended Complaint, these answering Defendants deny each and every allegation contained therein.

2. In answer to Paragraphs 2 and 3 of the First Amended Complaint, these answering Defendants admit the allegations contained therein.

1 3. In answer to Paragraph 4 of the First Amended Complaint, these answering
2 Defendants do not have sufficient information and belief to respond to said allegations and
3 so deny said allegations.

4 4. In answer to Paragraphs 5 and 20 of the First Amended Complaint, these
5 answering Defendants admit the allegations contained therein.

6 5. In answer to Paragraph 6 of the First Amended Complaint, these answering
7 Defendants admit that the San Jose Police Department is a department of the City of San
8 Jose and that the San Jose Police Department operates under the laws and policies of the
9 City. As to all of the other allegations in said paragraph, these answering Defendants deny
10 each and every allegation contained therein.

11 6. In answer to Paragraphs 7 through 10 of the First Amended Complaint, these
12 answering Defendants admit the allegations contained therein.

13 7. In answer to Paragraphs 11 through 17 of the First Amended Complaint,
14 these answering Defendants do not have sufficient information and belief to respond to
15 said allegations and so deny said allegations.

16 8. In answer to Paragraphs 18 and 19 of the First Amended Complaint, these
17 answering Defendants deny each and every allegation contained therein.

18 9. In answer to Paragraphs 21 through 29 of the First Amended Complaint,
19 these answering Defendants do not have sufficient information and belief to respond to
20 said allegations and so deny said allegations.

21 10. In answer to Paragraph 30 of the First Amended Complaint, these answering
22 Defendants admit that Van Zandt requested the San Jose Police Department to respond to
23 the scene of the incident, but these answering Defendants do not have sufficient
24 information and belief to respond to the remainder of the allegations in said paragraph and
25 so deny said allegations.

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1 11. In answer to Paragraphs 31 and 32 of the First Amended Complaint, these
2 answering Defendants do not have sufficient information and belief to respond to said
3 allegations and so deny said allegations.

4 12. In answer to Paragraph 33 of the First Amended Complaint, these answering
5 Defendants admit that upon arriving on the scene some of the San Jose Police Officers
6 spoke initially with the security guards for some period of time before speaking to Mr. Van
7 Zandt. Defendants further admit that at some point during the incident Mr. Van Zandt
8 inquired as to why police were speaking with him and he was told that he was being
9 questioned regarding the possibility of child molestation. As to all other allegations and
10 characterizations by Plaintiff of the facts revealed in said paragraph, these answering
11 Defendants deny each and every allegation contained therein.

12 13. In answer to Paragraph 34 of the First Amended Complaint, these answering
13 Defendants respond as follows: As to the first sentence in said paragraph, these
14 answering Defendants do not have sufficient information and belief to respond to said
15 allegations and so deny said allegations; as to the second sentence of said paragraph,
16 these answering Defendants acknowledge that at some point during the incident Plaintiff
17 informed them that he had been assisting his son in the bathroom; as to all of the
18 remaining allegations in said paragraph, these answering Defendants deny each and
19 every allegation contained therein.

20 14. In answer to Paragraph 35 of the First Amended Complaint, these answering
21 Defendants admit that Plaintiff expressed the desire to be placed under shelter from the
22 rain and that, pursuant to that request, Defendants gave Plaintiff the option to be placed in
23 the back of a patrol car. Defendants further admit that Plaintiff was walked to the patrol
24 car and frisked after being informed that such a frisk would have to take place if he chose
25 to sit in the back of the police car; as to all of the other allegations and characterizations of
26 the facts contained in said paragraph, these answering Defendants deny each and every
27 allegation contained therein.

1 15. In answer to Paragraph 36 of the First Amended Complaint, these answering
2 Defendants respond as follows: As to the first sentence of said paragraph, these
3 answering Defendants do not have sufficient information and belief to respond to said
4 allegations and so deny said allegations; as to the second and third sentences of said
5 paragraph, these answering Defendants admit that Plaintiff's van was searched, as well as
6 a purse in the van, and that Van Zandt's consent was neither requested nor obtained for
7 the search; as to all other allegations and characterizations of the facts contained in the
8 second and third sentences of said paragraph, these answering Defendants deny each
9 and every allegation contained therein.

10 16. In answer to Paragraph 37 of the First Amended Complaint, these answering
11 Defendants respond as follows; as to the first sentence of said paragraph, these answering
12 Defendants deny each and every allegation contained therein; as to the second sentence
13 of said paragraph, these answering Defendants admit that Van Zandt was in the presence
14 of San Jose Police Officers while they investigated the incident for approximately sixty to
15 eighty minutes and that, at some point, the officers learned that the child, who was
16 originally reported to have been a little girl, was actually a little boy; as to the remainder of
17 the allegations and characterizations contained in the second sentence of said paragraph,
18 these answering Defendants deny each and every allegation contained therein.

19 17. In answer to Paragraph 38 of the First Amended Complaint, these answering
20 Defendants admit that Plaintiff was detained, interrogated, and not able to leave the scene
21 if he so chose for somewhere between approximately sixty to eighty minutes. As to the
22 remainder of the allegations and characterizations of the facts in said paragraph, these
23 answering Defendants deny each and every allegation contained therein.

24 18. In answer to Paragraph 39 of the First Amended Complaint, these answering
25 Defendants admit that Plaintiff was not Mirandized and the Plaintiff was told, because he
26 was refusing to cooperate and answer the officers' questions, he might be arrested and
27 taken to jail in light of the citizen's allegations against him and all of the other
28 circumstances surrounding the incident, unless he answered the officer's questions

1 regarding the allegation made against him by the citizen and the location of the minor. As
2 to all of the other allegations and characterizations of the facts contained in said
3 paragraph, these answering Defendants deny each and every allegation contained therein.

4 19. In answer to Paragraph 40 of the First Amended Complaint, these answering
5 Defendants admit that in addition to interrogating Van Zandt and searching his vehicle at
6 some point, when Van Zandt's family was finally located, the officers questioned Van
7 Zandt's children out of the presence of Van Zandt and his wife without seeking the consent
8 for the questioning from either Van Zandt or his wife. As to all the other allegations and
9 characterizations of facts in said paragraph, these answering Defendants deny each and
10 every allegation contained therein.

11 20. In answer to Paragraph 41 of the First Amended Complaint, these answering
12 Defendants do not have sufficient information and belief to respond to said allegations and
13 so deny said allegations.

14 21. In answer to Paragraphs 42 through 44 of the First Amended Complaint,
15 these answering Defendants deny each and every allegation contained therein.

16 22. In answer to Paragraph 46 of the First Amended Complaint, these answering
17 Defendants hereby incorporate Paragraphs 1 through 21 above.

18 23. In answer to Paragraphs 47 through 49 of the First Amended Complaint,
19 these answering Defendants deny each and every allegation contained therein.

20 24. In answer to Paragraphs 50, 54, 58, 63, 65, 69, 73, 78, and 82, these
21 answering Defendants hereby incorporate Paragraphs 1 through 24 above.

22 25. In answer to Paragraphs 47 through 49, 51 through 53, 55 through 57, 59
23 through 64, 66 through 68, 70 through 72, 74 through 77, 79 through 81, these answering
24 Defendants deny each and every allegation contained therein.

25 26. In answer to Paragraph 83 of the First Amended Complaint, these answering
26 Defendants admit they had a duty to act reasonably under the circumstances. As to all
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1 other allegations and characterizations of the facts as contained in said paragraph, these
2 answering Defendants deny each and every allegation contained therein.

3 27. In answer to Plaintiff's Prayer for Relief, to the extent said Prayer for Relief
4 contains allegations and factual claims, these answering Defendants deny each and every
5 allegation and claim contained therein.

6 **AFFIRMATIVE DEFENSES**

7 AS AND FOR A FIRST AFFIRMATIVE DEFENSE, these answering Defendants
8 allege that the First Amended Complaint fails to state a claim upon which relief can be
9 granted.

10 AS AND FOR A SECOND AFFIRMATIVE DEFENSE, these answering Defendants
11 allege that any harm Plaintiff suffered was the result of negligent or otherwise wrongful
12 conduct of persons other than these Defendants and that the conduct of persons other
13 than these Defendants was the sole and proximate cause of the injuries and damages
14 alleged by Plaintiff.

15 AS AND FOR A THIRD AFFIRMATIVE DEFENSE, these answering Defendants
16 allege that all actions taken were undertaken in good faith and with a reasonable belief that
17 the actions were valid, necessary, constitutionally proper and objectively reasonable for a
18 police officer in the same circumstances, entitling the individual Defendants to the qualified
19 immunity of good faith.

20 AS AND FOR A FOURTH AFFIRMATIVE DEFENSE, these answering Defendants
21 allege that they are immune from the state law causes of action pursuant to Government
22 Code sections 800-1000.

23 AS AND FOR A FIFTH AFFIRMATIVE DEFENSE, these answering Defendants
24 allege they are immune from the state law causes of action pursuant to Government Code
25 section 815.2(b) and section 820.8 granting immunity for an injury caused by the act or
26 omission of another person.

1 AS AND FOR A SIXTH AFFIRMATIVE DEFENSE, these answering Defendants
2 allege that Plaintiff's First Amended Complaint is barred in that Plaintiff failed to comply
3 with the claims filing provisions of Government Code §§ 900, et seq.

4 AS AND FOR A SEVENTH AFFIRMATIVE DEFENSE, these answering Defendants
5 allege that Plaintiff's First Amended Complaint is barred by the applicable statutes of
6 limitation.

7 AS FOR AN EIGHTH AFFIRMATIVE DEFENSE, these answering Defendants
8 allege that Plaintiff's own negligent and improper conduct was the sole and proximate
9 cause of whatever injuries and damages Plaintiff alleges, if any injuries and damages there
10 are.

11 AS FOR A NINTH AFFIRMATIVE DEFENSE, these answering Defendants allege
12 that the individual Defendants are entitled to immunity from Plaintiffs' First Amended
13 Complaint by virtue of the provisions of Government Code of the State of California,
14 sections 800 through 1000, including, but not limited to Sections 820.2, 820.4, 820.6,
15 820.8, 821, 821.6 and 822.2.

16 AS FOR A TENTH AFFIRMATIVE DEFENSE, these answering Defendants allege
17 that their actions towards Plaintiff were lawful and justified under the facts of the case.

18 AS FOR AN ELEVENTH AFFIRMATIVE DEFENSE, these answering Defendants
19 allege that they are protected by the affirmative defenses provided by California Penal
20 Code Sections 197, 834(a), 835 and 835(a).

21 AS FOR A TWELFTH AFFIRMATIVE DEFENSE, these answering Defendants
22 allege that the allegations made by the citizen, Plaintiff's lack of cooperation with the
23 investigation and what Defendants learned from the security officers at the scene created
24 an exigency which legally justified the detention and questioning of Plaintiffs, as well as the
25 search of Plaintiff's vehicle and its contents.

26 AS FOR A THIRTEENTH AFFIRMATIVE DEFENSE, these answering Defendants
27 allege that the frisk of Plaintiff was legally justifiable and consented to by Plaintiff.

1 AS FOR A FOURTEENTH AFFIRMATIVE DEFENSE, these answering Defendants
2 allege that any damages or injuries suffered by Plaintiff were occasioned by his own
3 wrongful actions.

4 AS FOR A FIFTEENTH AFFIRMATIVE DEFENSE, these answering Defendants
5 allege that Defendant City of San Jose is entitled to immunity from Plaintiff's Complaint
6 herein by virtue of the provisions of Government Code sections 800-1000, including, but
7 not limited to, sections 815, 815.2, 815.6, 818, 818.2, 818.8, 844.6 and 845.

8 AS FOR A SIXTEENTH AFFIRMATIVE DEFENSE, these answering Defendants
9 allege that Defendant City of San Jose is immune from a claim of exemplary or punitive
10 damages by virtue of Government Code section 818.

11 AS FOR A SEVENTEENTH AFFIRMATIVE DEFENSE, these answering
12 Defendants allege that the individual Defendants have no liability and are immune from
13 claims of false arrest and subsequent false imprisonment pursuant to Penal Code section
14 847.

15 AS AND FOR AN EIGHTEENTH AFFIRMATIVE DEFENSE, these answering
16 Defendants allege they had reasonable cause to detain Plaintiff based on their knowledge
17 and observations at the time of the incident alleged in the Complaint.

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1 WHEREFORE, these answering Defendants pray:

2 1. That Plaintiff take nothing by his Amended Complaint;

3 2. That Plaintiff's First Amended Complaint be dismissed with prejudice;

4 3. That Defendants be awarded their costs of suit, including attorney's fees
5 incurred herein; and

6 4. For such other and further relief as the Court deems proper.
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8 **JURY TRIAL DEMAND**

9 These answering Defendants hereby demand a jury.
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11 Dated: December 27, 2007

RICHARD DOYLE
City Attorney

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14 By: /s/
MICHAEL R. GROVES
15 Senior Deputy City Attorney
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17 Attorneys for Defendants
CITY OF SAN JOSE, OFFICER PFEIFER,
18 OFFICER NATIVIDAD, OFFICER WEIR,
and OFFICER HIGGINS
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